Jan 22, Dismissed, Field

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SUPREME COURT OF THE UNITED STATES.

No. 261.

SAMUEL LOCKE, Pl'ff in Er.,

vs.

THE CITY OF NEW ORLEANS.

IN ERROR TO THE SUPREME COURT OF THE STATE OF LOUISIANA.

GIDEON, Printer.

No. 30

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STATE OF LOUISIANA,
Fifth District Court of New Orleans.

CITY OF NEW ORLEANS
vs.
SAMUEL LOCKE. } No. 12,365.

Petition, Filed 15th March, 1858.

To the Honorable the Judge of the Fifth District Court of New Orleans:

The petition of the city of New Orleans, a corporation under the laws of Louisiana, respectfully shows:

That Samuel Locke, who resides in New Orleans, is indebted to petitioner in the sum of two hundred and forty dollars, with 8 per cent. per annum interest, from the 1st day of January, 1849, on $110; from the 1st January, 1850, on $110; and from 1st January, 1852, on $20, till paid for this, to wit:—

That said sum is the amount of a tax levied and imposed upon said Samuel Locke in favor of the late Municipality No. one, of the city of New Orleans, under an ordinance of said municipality, approved 19th March, 1850, on the capital owned and employed by the said Samuel Locke, within the limits of the said municipality during the years 1848, 1849, and 1851, according to the assessment rolls for those years, and the bills hereto annexed for reference.

That your petitioner is vested by law with all the right, title, and interest of said municipality in and to said tax, and all other assets and property lately belonging to said municipality.

Wherefore, petitioner prays that said Samuel Locke be cited to appear and answer this petition, and after due proceedings, be condemned to pay petitioner said sum of two hundred and forty dollas, with eight per cent. per annum interest thereon, till paid, and costs.

And petitioner prays for all such other and further relief as equity and the nature of the case may require.

(Signed) JOHNSON & DENIS.
(Signed) HUNT & DEMYRE.

Tax Receipts annexed to Petition, filed 15th March, 1858.

(Treasury Department.)

No. 115. First Municipality. Treasury Department.

Received of Sam'l Locke the sum of one hundred and ten dollars and cents, for special tax of the year 1848, in conformity to law, as follows, viz:—

Amount of capital, $10,000
Ship St. B., 1,000

$11,000 at 1 per cent. $100.

(Signed) O. DEBUYS, Comptroller. ADAM GRIFFIN, Treasurer.

(Treasury Department.)

No. 592. First Municipality. Treasury Department.

Received of Sam'l Locke the sum of one hundred and ten dollars and cents, for special tax of the year 1849, in conformity to law, as follows, viz:—

Amount of capital, $10,000
Ships, 1,000

$11,000 at 1 per cent. $100.

(Signed) O. DEBUYS, Comptroller. ADAM GRIFFIN, Treasurer.

(Treasury Department.)

No. 1350. First Municipality. Treasury Department.

Received of Sam'l Locke the sum of twenty dollars and cents, for tax of the year 1851, in conformity to law, as follows, viz:—

Amount of capital, $2,000
Vehicles, "
Horses, "

$2,000 at 1 per cent. $20.

(Signed) O. DEBUYS, Comptroller. J. A. DURET, Treasurer.

Citation.

State of Louisiana, Fifth District Court of New Orleans.

Mr. Samuel Locke, of this city—

You are hereby summoned to comply with the demand contained in the petition, of which a copy accompanies this citation, or deliver your answer to the same, in the office of the Clerk of the Fifth District Court of New Orleans, in the city of New Orleans, in ten days after the service hereof.

Witness the Honorable H. B. Eggleston, Judge of the said court, the 15th day of March, in the year of our Lord 1858.

CITY OF NEW ORLEANS vs. SAMUEL LOCKE. } No. 12,362

[SEAL.] (Signed) J. O. CHALON, D'y Clerk.

Sheriff's Return.

Rec'd March 16th, 1858, and on the 17th of the same month and year, served copy of the within petition and citation on Samuel Locke, personally.

Returned same day

(Signed) C. TROUARD, D'y Sh'ff.

Answer, filed 26th March, 1858.

CITY OF NEW ORLEANS
vs.
SAMUEL LOCKE.

Fifth District Court of New Orleans.

Now comes the defendant, Samuel Locke, and for answer to the petition filed in the above entitled suit, says—

That he denies all and singular the claims therein set forth. And further, said defendant avers that the taxes claimed by the plaintiff in said suit, are illegal, null and void, and not demandable of said defendant, for that the formalities required by law in the levying of said taxes, and in the making of the assessment upon which the same were based were not complied with, for that none of the formalities required by an act entitled "An act relative to the city of New Orleans," approved March 18th, 1850, and more especially by sections 1, 2, and 6 of said act, were complied with in the levying of said taxes, for that the budgets or estimates exhibiting the various items of expenditure for the years for which said taxes were levied, were not duly published as required by law, for that the assessments of the taxes sued for were irregular and illegal; for that the act entitled "An act to authorize the several municipalities of the city of New Orleans to levy taxes upon capital," approved February 7th, 1850, was and is unconstitutional, and therefore void; and for that the ordinance of the late municipality No. one, approved March 19th, 1850, under and by virtue of which said taxes were levied and imposed was and is illegal, null and void.

Defendant also pleads prescriptions of three and five years.

Wherefore defendant prays to be hence dismissed at plaintiff's costs, and for all further, general and equitable relief.

(Signed) EDW. H. DURELL,
(Signed) GEO. A. BROWN.

Order. Case continued.

State of Louisiana, Fifth District Court of New Orleans.

Thursday, 16th April, 1858.

Present: Hon. H. B. Eggleston, Judge.

CITY OF NEW ORLEANS
vs.
SAMUEL LOCKE.
No. 12,365.

This case fixed for trial for this day not having been reached, is ordered to be continued by preference.

Evidence, Filed 29th April, 1858.

Fifth District Court of New Orleans.

Thursday, 29th April, 1858.

Present, Hon. W. B. Eggleston, Judge.

CITY OF NEW ORLEANS
vs.
SAMUEL LOCKE. } No. 12365.

On behalf of plaintiff is offered in evidence the tax receipts annexed to petition.

Also the assessment rolls for the years 1848 and 1849.

Also the ordinance now filed and marked A.

Plaintiff discontinued this suit so far as the item of $20 tax for the year 1851.

Tax receipts offered in evidence by plaintiff. Filed 15th March, 1858.

(Treasury Department.)

No. 115. First Municipality. Treasury Department.

Received of Sam'l Locke the sum of one hundred and ten dollars and cents, for special tax of the year 1848, in conformity to law as follows, viz:—

Amount of capital,	$10,000
Ship St. B.,	1,000
	$11,000 at 1 per cent. $110.

(Signed) O. DEBUYS, Comptroller. ADAM GRIFFIN, Treasurer.

(Treasury Department.)

No. 592. First Municipality. Treasury Department.

Received of Samuel Locke the sum of one hundred and ten dollars and cents, for special tax of the year 1849, in conformity to law, as follows, viz:—

Amount of capital,	$10,000
Ships,	1,000
	$11,000 at 1 per cent. $110.

(Signed), O. DEBUYS, Comptroller. ADAM GRIFFIN, Treasurer.

(Treasury Department.)

No. 1350. First Municipality. Treasury Department.

Received of Sam'l Locke the sum of twenty dollars and cents for tax of the year 1851, in conformity to law, as follows, viz:—

Amount of capital,	$2,000	
Vehicles,	"	
Horses,	"	
	$2,000 at 1 per cent.	$20.

(Signed), O. DEBUYS, Comptroller, J. A. DUREL, Treasurer.

Document A. Filed 19th April, 1858.

Mayoralty of New Orleans.

City Hall, 25th day of February, 1857.

Council Municipality No. one.

Municipality No. one, of the city of New Orleans, ordains as follows:—

Article 1st. Be it ordained, that in conformity with an act of the Legislature of this State, approved February 7th, 1850, a tax of one dollar on every one hundred dollars for the years 1848 or 1849 is hereby imposed on the capital owned or employed within the limits of this municipality, according to the assessment rolls for those years.

Article 2d. Be it further ordained, that the tax hereby imposed shall be payable on demand, and all persons who shall pay said tax within ten days from the promulgation of this ordinance by the council, shall be entitled to a deduction of two and a half per cent. on the amount of their respective tax receipts.

(Signed) JH. GENOIS, Recorder.
A true copy. JULES CASSARD, Secretary.

Approved 19th March, 1850.
(Signed) A. D. CROSSMAN, Mayor. [L. S.]

Document B. Filed 29th April, 1858.

Assessment rolls for 1848 & 1849. Extract of assessm't roll for 1848, page 15.

Square 10. S'l Locke am't cash value of stock or int. in steamboats, ships, &c.,	$1,000
Capital vested or employed in trade, traffic, merchandise, or in any kind of commerce,	10,000

Extract of Ass't Roll for 1849, page 10.

Square 10. S'l Locke, am't do. do.	$1,000
" " "	10,000

Order. Case continued.

State of Louisiana, Fifth District Court of New Orleans.

Tuesday, 29th April, 1858.

Present: Hon'r H. B. Eggleston, Judge.

CITY OF NEW ORLEANS
vs.
SAMUEL LOCKE. } 12365.

This case came on this day for trial. Hunt & Denegre for plaintiffs, E. H. Durell for defendant. When, after hearing evidence, the further trial of this case was ordered to be continued by preference.

Order. Case continued.

State of Louisiana, Fifth District Court of New Orleans.

Monday 17th May, 1858.

Present: Hon. H. B. Eggleston, Judge.

CITY OF NEW ORLEANS
vs.
SAMUEL LOCKE. } 12365.

This case fixed for trial for this day was called, and ordered to be continued.

Judgment.

State of Louisiana, Fifth District Court of New Orleans.

Monday, 21st June, 1858.

Present: Hon. H. B. Eggleston, Judge.

CITY OF NEW ORLEANS
vs.
SAMUEL LOCKE.

This case came on to-day for trial. Hunt & Denegre for pl't'ff, E. H. Durell for defendant. When, after hearing evidence and argument of counsel, and the court being satisfied that plaintiff's case is fully made out.

It is ordered, adjudged and decreed that the plaintiff, the City of New Orleans, do have and recover from the defendant, Samuel Locke, the sum of two hundred and twenty dollars, with 8 per cent. interest on $110, from the 1st January, 1849, until paid, and the same rate of interest on $110 from the 1st day of January, 1850, until paid, and costs of suit.

Judgment rendered 21st June, 1858.

Signed 26th June, 1858.

(Signed), H. B. EGGLESTON, Judge.

Order on motion for Appeal.

State of Louisiana, Fifth District Court of New Orleans.

Monday, 28th June, 1858.

Present, Hon. H. B. Eggleston, Judge.

CITY OF NEW ORLEANS
vs.
SAMUEL LOCKE. } 12365.

On motion of E. H. Durell, of counsel for defendant, Samuel Locke, in this case, and on representing that said defendant feels aggrieved by the judgment rendered therein on the 21st day of June, 1858, and signed on the 26th day of June, 1858.

It is ordered that a suspensive appeal be granted said defendant from said judgment to the Supreme Court of this State, said defendant giving bond therefor as the law directs.

Bond of Appeal. Filed 28th June, 1858.

Know all men by these presents, that we, Samuel Locke and George F. Witle, are held and firmly bound unto the City of New Orleans, its executors, administrators and assigns, in the sum of six hundred dollars, for the payment whereof we bind ourselves, our heirs and administrators, firmly by these presents. Sealed with our seals, and dated in the city of New Orleans, on this 28th day of June, in the year of our Lord one thousand eight hundred and fifty-eight.

Whereas, the above bounden Samuel Locke has this day filed a motion of appeal from a final judgment rendered against him in the suit of City of New Orleans *vs.* Samuel Locke, in the Fifth District Court of New Orleans, on the 21st day of June, 1858, and signed on the 26th day of said June.

Now the condition of the above obligation is such that the above bound Samuel Locke shall prosecute his appeal, and shall satisfy whatever judgment may be rendered against him, or that the same shall be satisfied by the proceeds of the sale of his estate, real or personal, if he be cast in the appeal; otherwise, that the said George F. Witle, his surety, shall be liable in his place.

(Signed), SAMUEL LOCKE. [L. S.]
(Signed), GEO. F. WITLE. [L. S.]

Signed, sealed and delivered in the presence of
(Signed), E. H. DURELL.

Certificate.

I hereby certify that the above and foregoing twelve pages do contain a transcript of all the proceedings had, as well as of all the documents filed, and all the documents adduced, on the trial of the

cause wherein the City of New Orleans is plaintiff and Samuel Locke is defendant, instituted in this court, and now on the records thereof under the No. 12365.

In testimony whereof, I have hereunto set my hand and affixed the seal of the said court, at the city of New Orleans, on this twenty-fourth day of August, in the year of our Lord one thousand eight hundred and fifty eight, and in the eighty-third year of the independence of the United States of America.

[SEAL.] (Signed) DELPHIN BIENVENU,
D'y Cl'k.

Endorsement: 5901. State of Louisiana. Fifth District Court of New Orleans. No. 12365. City of New Orleans, app'ee, *vs.* Samuel Locke, app't. Johnson & Denis, Hunt & Denegre, atty's for plaintiff and appellee; E. W. Durell & Geo. A. Breaux, att'ys for defendant and appellant. No. 5901, Supreme Court. Filed November 5th, 1858. (Signed) F. A. Foygnet, D'y Clerk.

PROCEEDINGS IN THE SUPREME COURT.

Opinion and Decree.

Supreme Court of the State of Louisiana.

The court met Monday, 12th December, 1859. Present, their honors E. T. Merrick, Chief Justice, A. M. Buchanan, J. L. Cole, Thomas T. Land, and Albert Voorhies, Associate Justices.

CITY OF NEW ORLEANS, App'ee,
vs. } 5901.
SAMUEL LOCKE, App't.

Appeal from the Fifth District Court of New Orleans.

In this cause, Mr. Justice Voorhies this day delivered the opinion of the court in writing, in the words and figures following:—

This case presents the same question of unconstitutionality of retroactive taxation, as the one just decided of the City of New Orleans *vs.* P. D. Poutz.

There is, besides, the plea of prescription of three and five years.

With regard to the prescription of three years, the court is referred to the 2nd section of the Act Relative to Prescription, approved 5th March, 1852, Sess. Acts, p. 90. The section reads:—

"All other open accounts, the prescription of which is ten years by existing laws, shall be prescribed by three years."

The imposition of a tax cannot be assimilated to an account, and still less to an open account. When a tax is laid, and the delays granted to question the correctness of the assessment have expired, the matter is closed in that respect. The right to resort to executory proceedings for the collection of both State and municipal

taxes, is a sufficient answer to the point that a tax is an account, and especially an open account.

There is no provision of law fixing the period of five years for the prescription of a tax.

It is therefore ordered, adjudged, and decreed, that the judgment of the court below be affirmed with costs.

Order on Minutes.

Supreme Court of the State of Louisiana.

The court met Tuesday December 20th, 1859; present, their honors E. T. Merrick, Chief Justice, Thos. T. Land and Albert Voorhies, Associate Justices; their honors A. M. Buchanan and J. L. Cole, Associate Justices, are absent.

CITY OF NEW ORLEANS, App'ee,
vs. } 5901.
SAMUEL LOCKE, App't.

It is ordered by the court that it be certified "that in said cause there was drawn in question the validity of the statute of the State of Louisiana, approved February 7th, 1850, entitled 'An act to authorize the several municipalities of the city of New Orleans to levy taxes upon capital,' upon the ground that it was repugnant to the Constitution of the United States, and that the decision of the court was in favor of the validity of said statute."

Bond for a Writ of Error.

Know all men by these presents, that we, Samuel Locke as principal, and George F. Witte as security, are held and firmly bound unto the city of New Orleans, in the full and just sum of nine hundred dollars, to be paid to the said city of New Orleans, their certain attorneys, executors, administrators, or assigns; to which payment well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally by these presents.

Sealed with our seals, and dated this nineteenth day of January, in the year of our Lord one thousand eight hundred and sixty.

Whereas lately, at a Supreme Court, of the State of Louisiana, holding sessions in and for the Eastern District of Louisiana, at the city of New Orleans, in a suit depending in said Supreme Court wherein the city of New Orleans is plaintiff, and Samuel Locke, defendant, judgment was rendered against the said Samuel Locke, defendant, and the said Samuel Locke having obtained a writ of error, and filed a copy thereof in the clerk's office of the said Supreme Court, to reverse the judgment in the aforesaid suit, and a citation directed to the said city of New Orleans, citing and admonishing them to be and appear at Supreme Court of the United States to be holden at Washington the first Monday of December next.

Now the condition of the above obligation is such that if the said Samuel Locke shall prosecute his writ to effect, and satisfy such judgment as may be rendered against him, and answer all damages and costs, if he fails to make his plea good, then the above obligation to be void, else to remain in full force and virtue.

(Signed), SAMUEL LOCKE. [L. S.]
" GEO. F. WITTE. [L. S.]

Sealed and delivered in the presence of
(Signed), E. H. DURELL.

Approved January 20th, 1860.
(Signed), EDWIN T. MERRICK,
Chief Justice.

(Endorsed): Supreme Court of the State of Louisiana. No. 5901. City of New Orleans *vs.* Samuel Locke. Bond for writ of error. Filed January 20th, 1860.
(Signed), F. A. FOYGNET, Dy. Clerk.

Writ of Error.

United States of America, *ss.*

The President of the United States to the honorable the Judges of the Supreme Court of the State of Louisiana, holding sessions for the Eastern District of Louisiana, greeting:—

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Supreme Court before you or some of you, between the City of New Orleans and Samuel Locke, a manifest error hath happened to the great damage of the said Samuel Locke as by his complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the first Monday of December next, in the said Supreme Court to be then and there held; that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the Honorable Roger B. Taney, Chief Justice of the said Supreme Court of the United States, this nineteenth of January, in the year of our Lord one thousand eight hundred and sixty.

[SEAL.] (Signed), J. W. GURLEY,
Clerk of the United States Circuit Court
for the Eastern District of Louisiana.

(Endorsed): United States Circuit Court. No. 5901. City of New Orleans *vs.* Samuel Lock. Writ of Error. 5901. Supreme Court of the State of Louisiana. Filed January 20th, 1860.
(Signed), F. A. FOYGNET, Dy. Clerk.

Copy of Writ of Error.

United States of America, *ss.*

The President of the United States to the Honorable the Judges of the Supreme Court of the State of Louisiana, holding sessions for the Eastern District of Louisiana, greeting:—

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Supreme Court before you or some of you, between the City of New Orleans and Samuel Locke, a manifest error hath happened to the great damage of the said Samuel Locke, as by his complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, we command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the first Monday of December next, in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Roger B. Taney, Chief Justice of the Supreme Court of the United States, this nineteenth of January, in the year of our Lord one thousand eight hundred and sixty.

[L. S.] (Signed) J. W. GURLEY,
Clerk of the United States Circuit Court
for the Eastern District of Louisiana.

(Endorsed): United States Circuit Court. No. 5901. City of New Orleans *vs.* Samuel Lock. Writ of error. . Copy of writ of error lodged in the Clerk's office of the Supreme Court of the State of Louisiana for the Eastern District, in pursuance the statute in such cases made and provided this twentieth day of January, 1860.
(Signed) E. H. DURELL,
Attorney of Plaintiff in Error.

5901. Supreme Court of the State of Louisiana. Filed January 20th, 1860.
(Signed) F. A. FOYNGET, D'y Cl'k.

Citation in Error.

The United States of America, Eastern District of Louisiana.

The President of the United States to the city of New Orleans, greeting:—

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at the city of Washington on the first Monday of December next, pursuant to a writ of error filed in the Clerk's office of the Supreme Court of the State of Louisiana, holding sessions in the Eastern District of Louisiana, wherein Samuel Locke is plaintiff in error, and you are defendants, to show cause, if any there be, why the judgment rendered against the said plaintiff in error as in said writ mentioned should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Edwin T. Merrick, Chief Justice of the Supreme Court of the State of Louisiana, this twentieth day of January, in the year of our Lord one thousand eight hundred and sixty.

(Signed) EDWIN T. MERRICK.

5901. Supreme Court of the State of Louisiana. Filed January 20th, 1860.

(Signed) F. A. FOYGNET, D'y Cl'k.

(Endorsement): Supreme Court of the State of Louisiana. No. 6901. City of New Orleans *vs.* Samuel Locke. Citation in Error.

Sheriff's Return.

Received, New Orleans, February 1st, 1860, the within writ of error, and on the same day, month, and year, I served the same upon the city of New Orleans, by handing a certified copy of the same to Honorable Gerard Stith, Mayor of the city of New Orleans, in person. Writ returned February 1st, 1860. Sheriff's fees, $1 00.

(Signed) JAMES STRAWBRIDGE,
Deputy Sheriff of the Parish of New Orleans.

Supreme Court. Filed February 1st, 1860.

(Signed) F. A. FOYGNET, D'y Clerk.

United States of America,
Supreme Court, Eastern District, State of Louisiana.

I, Eugene Lasere, Clerk of the Supreme Court of the State of Louisiana for the Eastern District, do hereby certify that the above and foregoing pages contain a true copy of the transcript of the proceedings had in the Fifth District Court of New Orleans, in a certain suit wherein the city of New Orleans was plaintiff, and Samuel Locke was defendant, and also of the proceedings had in

the Supreme Court on the appeal taken by said Samuel Locke, which appeal is now on the files thereof under number 5901.

In testimony whereof I have hereunto set my hand and affixed the seal of the said court, at the city of New Orleans, this ninth day of February, in the year of our Lord one thousand eight hundred and sixty, and in the eighty-fourth year of the independence of the United States of America.

[SEAL.] EUGENE LASERE, Clerk.

United States of America,
Supreme Court, Eastern District, State of Louisiana.

I, Edwin T. Merrick, Chief Justice of the Supreme Court of the State of Louisiana, do hereby certify that Eugene Lasere is Clerk of the Supreme Court for the Eastern District, that the signature of Eugene Lasere to the foregoing certificate is in the proper handwriting of him the said clerk, that the certificate is in due form of law, and that full faith and credit are due to all of his official acts as such.

In testimony whereof I have hereunto set my hand and seal, at the city of New Orleans, this ninth day of February, in the year of our Lord one thousand eight hundred and sixty.

E. T. MERRICK. [SEAL.]

Endorsed: Louisiana Sup. Court. No. 261. Samuel Locke, pl'ff in Er. *vs.* The City of New Orleans. Filed 7th December, 1860.



Supreme Court of the United States.

SAMUEL LOCKE, PLAINTIFF IN ERROR,

vs.

THE CITY OF NEW ORLEANS.

BRIEF FOR DEFENDANT IN ERROR.

This is a writ of error to the supreme court of the State of Louisiana.

The city authorities, of New Orleans, instituted a suit against the plaintiff in error, a resident of the city, to claim two hundred and forty dollars for taxes due on capital, owned and employed in that city, in the years 1848, 1849, and 1851, assessed by an ordinance of 19th March, 1850, by the late Municipality, No. One, then one of the political subdivisions of New Orleans.

The answer (5) sets up a general denial, and, also, this further defence, that the act of the Legislature, entitled "An act to authorize the several municipalities of the city of New Orleans to levy taxes upon capital," approved February 7, 1850, was unconstitutional and void, and that the above mentioned ordinance, of March 19, 1850, is illegal, null, and void.

The judgment of the district court was for the city of New Orleans, and Locke having appealed to the Supreme Court, it was affirmed. (10.)

The Supreme Court afterwards, viz: on December 20, entered on its minutes the following: (11.)

"It is ordered by the court that it be certified in said cause, there was drawn in question the validity of the statute of the State of Louisiana, approved February 7, 1850, entitled 'An act to authorize the several municipalities of the city of New Orleans to levy taxes upon capital,' upon the ground that it was repugnant to the Constitution

of the United States, and that the decision of the court was in favor of the validity of the statute."

This certificate was evidently given at the instance of Locke's counsel, who desire to remove the case to this Court, by writ of error. It may have the effect of giving jurisdiction to this Court, under the 25th section of the Judiciary act.

The opinion of the supreme court of the State alludes to this question only in the following words: (16.)

"This case presents the same question of unconstitutionality, of retrospective taxation, as the one just decided of the city of New Orleans *vs.* P. D. Poutz."

The court then decides a question of prescription which this Court cannot revise in such a case.

In order to know more fully what the supreme court decided, and under what circumstances, and upon what grounds it made the decision, this Court is expected to seek information *aliunde*. It is respectfully submitted that this Court cannot be expected to complete the records of the cases brought before it. The supreme court of the State ought, at least, to have incorporated in its order of December, 20, 1859, (11) the judgment in the case of New Orleans *vs.* Poutz, and thus have made it the judgment rendered in this case.

But if this objection was not well taken, we turn to the decision in the city of New Orleans *vs.* Poutz, which is found printed on page 853, of the 14 Annual Reports. It refers to the cases of the city of New Orleans *vs.* Cordeviolle and Lacroix, (13 Ann., 268,) and Municipality No. One, and M. Wheeler and Blake, (10 Ann., 745,) in which the same question was decided, in the same manner. In that case it was urged that the act of the Legislature, of February 7, 1850, was unconstitutional and void, because it is retroactive in its operation. The State court held differently. A dissenting judge (10 Ann., 746,) objects to this act, on the ground that it was contrary to the constitution of the State of Louisiana.

If it is attempted to give jurisdiction to this Court, in this case, it must obviously be upon the ground that the Louisiana statute is either an *ex post facto* law, or a retroactive law. But in Carpenter *vs.* Pennsylvania, (17 Howard, 463,) this Court held: "The debates in the Federal Convention, upon the Constitution, show that the term *ex post facto* laws, was understood in a restricted sense, relating to criminal cases

only, and that the description of Blackstone of such laws was referred to for their meaning." This signification was adopted in this Court shortly after its organization, in opinions carefully prepared, and has been repeatedly announced since that time.

If this act was retrospective, the Court would yet have no jurisdiction, because it clearly does not violate a contract. In the case of "Charles River Bridge *vs.* Warren Bridge," *et al*, (11 Pet., 539,) this Court held: "It is well settled by the decisions of this Court, that a State law may be retrospective in its character, and may divest vested rights, and yet not violate the Constitution of the United States, unless it also impairs the obligation of a contract," and then the Court reviews other cases to the same effect.

We trust that more than enough has been said to show that this writ of error must be dismissed.

Respectfully submitted,

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